



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 14, 1998

Mr. Mark Walker
Attorney
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR98-3097

Dear Mr. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120487.

The Lower Colorado River Authority ("LCRA") received a request for pricing information of Temple, Inc. that you contend may be withheld from the public pursuant to sections 552.104 and 552.110 of the Open Records Act (the "Act").

Section 552.104 of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982); 184 (1978). You indicate that the bidding process is complete in this case.¹ Therefore, you may not withhold the requested information under section 552.104 of the Government Code.

Section 552.110 excepts from disclosure a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified Temple, Inc. about the request for

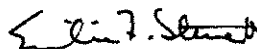
¹You state, "Indeed, the requesting party was a bidder in the same bidding process in which Temple provided the subject information."

information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Open Records Act in certain circumstances). This office has not received a response from Temple, Inc.

Because Temple, Inc. did not respond to our notice, we have no basis to conclude that this company's information is excepted from disclosure. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). The pricing information submitted by Temple, Inc., must therefore, be released to the requestor.

We have considered the exception you claim and have reviewed the documents at issue. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS/nc

Ref: ID# 120487

Enclosures: Submitted documents

cc: Mr. David Floyd
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(w/o enclosures)

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4111 Todd Lane, Suite F
Austin, Texas 78744
(w/o enclosures)